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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1675

MORRISON MOTOR FREIGHT, INC.,

Petitioner,

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,

Respondent.

CERTIORARI TO THE SUPREME COURT OF OHIO.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI BY MORRISON MOTOR FREIGHT, INC.

THOMAS V. KOYKKA,
SMITH WARDER,
ARTER & HADDEN,
1144 Union Commerce Building,
Cleveland, Ohio 44115,
Attorneys for Petitioner.

May 3, 1971.

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APPENDIX.

ORAL OPINION OF THE TRIAL COURT.

No. 807,609.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, CUYAHOGA COUNTY, SS.

HELEN GRETA FOX,
Administratrix of the Estate of HARRY EUGENE FOX,
Plaintiff,

vs.

MORRISON MOTOR FREIGHT, INC.,
Defendant.

PROCEEDINGS.

The Court: Gentlemen of counsel, I wish there were some way the Court could have time to consider these very vital problems that come up in the trial of these cases.

I was wondering if we might do such a thing as filing a demurrer to the prayer to get some time so we could read some of these cases that were presented in this very vital question.

I suggest, if it comes up again, that both counsel agree to go to Room 1 and ask it be assigned to some Judge so that the Judge can give it the attention it should have.

I read carefully through the briefs yesterday and late last night I was still reading some of the cases. You and I both know I couldn't have read all the cases cited in the time I had to pass on it.

I want to say that in all of the years I have been on the bench, this is one of the most difficult problems that

has been presented to me. There were very able briefs on both sides of this proposition, and I don't mind telling you both that I have been on both sides of the proposition myself. At one time I was decided one way, and another time another way.

I will also make the confession that perhaps some of my brethren don't admit, that I do not claim to be infallible, and if the judgment doesn't meet with your pleasure, I am sure you can have a reviewing court look at it. I know the side that loses is going to think that I am wrong —and I have been wrong—and I would be very glad to see a reviewing court take this matter up and have the matter settled in the State of Ohio.

In final analysis I find myself faced with an almost unbroken line of Ohio decisions—I said, almost unbroken —which follow the lex loci delicti theory, and that rule has been followed in Ohio for many, many years.

I also find myself confronted with the proposition that there was no cause of action for wrongful death at common law. In 1851 Ohio adopted a statute similar to England's Lord Campbell's Act, and then, and only then, was the wrongful death action born in the State of Ohio. It is a pure creature of statute.

Also, I feel that Ohio cannot pass a death statute with extra-territorial effect. Can our legislators in the State of Ohio, elected by the citizens of Ohio, pass a statute that will have effect in the State of Illinois?

Also, I find that I don't believe the Illinois Statute is severable. They say, we give you a claim for wrongful death but it's a limited claim.

Now, I want to say right here, I don't agree with statutes that place a limit on wrongful death. I think that the limit should be placed on it by what can be proved in court. I am unalterably opposed to that.

But also, I do not feel I am the legislature of the State of Illinois and I do not feel that I can, in this court, change the law of Illinois, which I would be doing, in effect. If I declared their statute unconstitutional, then there would be no cause of action for wrongful death in a matter where the death took place in the State of Illinois.

Now, I am aware of this new theory of grouping, I would say of significant contacts. It was embraced by New York, by California, and other places. It is sanctioned by such progressive judges as Chief Justice Tramor.

Also, I am aware of the uncertainty that this rule produces, this nebulous rule of grouping of contacts. Who is going to say what state has more contact with the parties so that this law, this rule, is going to be applied? I can see where one Judge would say Ohio has more contacts and another Judge would say no, I think the place where the accident happened has more contact with the parties. We know there are some cases that have been decided in which under the same set of facts they have reached different conclusions.

I am also aware that this is a bad case, and that bad cases make bad law. My sympathy here is with the plaintiff in facing such an unreasonable limit as is placed on this by the statute.

Now, I would like to call your attention to a case—I know there are a lot of cases; I don't know if I picked it up among your cases or not—*Goranson vs. Capital Airlines, Inc.*, found in 5 Ohio Official Reports, page 106. This is a case from the 6th Circuit down in Cincinnati, the Federal Circuit Court.

The proposition of the syllabus reads:

> "A federal court sitting in a state which has a well established conflicts of law rule applying to matters of damages the law of the jurisdiction in which

the acts occurred, will not find that the prohibition in the constitution of the forum state of limitations on damages in wrongful death actions establishes a public policy which forbids the enforcement of such a limitation from the lex loci delicti, where the highest court of the forum has not ruled on this issue."

Now, the Court goes on, on page 108; the Circuit Court of Cincinnati:

"The question in this case arises out of a conflict in the law between Ohio and Virginia in a wrongful death case. Liability in Virginia is limited to $30,000 by Section 8633, the Code of Virginia, 1950, as amended. Article 1, Section 19a of the Constitution of the State of Ohio provides, 'The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.'

"By order of March 2, 1964, entered on a motion for summary judgment, the District Judge, for the Northern District of Ohio, held that, 'The measure of damages in an action for wrongful death is governed by the lex loci delicti', and that the Virginia statute limiting liability to $30,000 is applicable to this case. The District Judge certified that a controlling question of law was involved and we allowed an appeal under Section 1292(b), Title 28, United States Code."

"In a per curiam opinion in *Goranson vs. Kloeb, supra,* we said that under conflict of laws, 'Ohio recognizes the application of the principle of lex loci delicti in wrongful death cases,' and that, 'The measure of damages is governed by the law of the place where the accident occurred.'

"Because of the importance of the question on conflict of laws and some recent decisions, we approach the question presented de novo. Jurisdiction is invoked by reason of diversity of citizenship,"

and he goes on to talk about citizenship.

He quotes the Supreme Court.

"As early as 1891, in *Alexander vs. Pennsylvania Company,* 48 Ohio State 623, page 636, the Supreme Court of Ohio said, 'An act should be judged by the law of the jurisdiction where it was committed; the party acting or omitting to act must be presumed to have been guided by the law in force at the time and place, and to which he owed obedience; if his conduct according to that law violated no right of another, no cause of action arose, for actions at law are provided to redress violated rights.'

"This rule of conflict of laws has been continuously followed in Ohio since that time."

Then he cites quite a few cases.

"We are asked by counsel for appellant, in this wrongful death action, to establish a new rule for Ohio on the grounds that the Virginia limitation of damages is against public policy and that it would affect Ohio domiciliaries inequitably. It is argued that since the Ohio Constitution, Article 1, Section 19a above quoted, prohibits any limitations on damages in a wrongful death action in Ohio a conflicts rule which accepts such a limitation from any other state is contrary to public policy in Ohio and ought not be enforced.

"It is further argued that when the forum state has significant contact with parties to the litigation who would be adversely and unjustly affected by applying a conflict of laws rule such as Ohio has, it should be abandoned. It is true in this case that the application of the Ohio rule enforcing the Virginia limitation of damages would adversely affect the decedent's family, in that the amount of damages that might be recovered would be limited to $30,000."

Then the Court goes on to say:

> "There is considerable discussion in the recent cases on whether the extent of damages recoverable is to be treated as part of the substantive or the procedural law of the state. The reasoning in these cases is persuasive but we are not at liberty to adopt a new rule of conflict of laws for Ohio, in the face of such a well established rule as is now practiced in Ohio. In a case such as the one now before us, a federal court sitting in Ohio is limited to interpreting and applying the law of Ohio as it stands."

Now, gentlemen, the significance of that case, in my humble judgment, is that here is a United States Circuit Court, and they say that this rule is so well grounded in Ohio, it has been the rule of law of Ohio for such a long time, that as a federal court sitting we are not going to run in the face of all these Ohio decisions by Ohio courts and say that we should adopt a new rule for the State of Ohio.

Now, the Circuit Court at Cincinnati has pointed out that this has been a long standing law of Ohio, and, gentlemen, it is a question in my mind as to whether we would be doing more harm than good. Bad cases make bad law, and I certainly feel that because of this unfortunate state in Illinois, that plaintiff is going to be penalized in this case.

But I do not feel that the Court has any right to confuse all the law in the whole state, because who is going to take this nebulous theory and say this state has more contact or that state has more contact?

I am strongly opposed to guest statutes. I don't think that if I pick somebody up in my automobile and transport them someplace, that I have a right to cripple them and injure them permanently and then say, no liability, he was

a guest, he didn't pay me anything for it. And we try many guest cases in our courts here, where, for instance two Ohio people are in Pennsylvania. They have no guest statute. We sue in our courts and we apply the law of Pennsylvania; we say there is no guest statute in Pennsylvania and the guests may sue the driver.

Are we going to do away with all of these cases? Are we going to say Ohio has the more contact with them? We are never going to allow any more recovery in these guest cases outside of Ohio?

I think it can do more harm than good. And I think—of course, it is only my humble opinion—I think it can confuse the law so that nobody knows what the law is in Ohio at all.

If this radical departure in Ohio is to be made, gentlemen, it will have to be made by some reviewing court.

It is the judgment of this Court that the death statute of Illinois, as it was worded in September 19, 1964, is the governing statute. If it results in injustice to this plaintiff, the Court can say, I did not enact it. To nullify it I feel I would have to make an illogical approach to the law, and entangle and confuse the law of Ohio.

Gentlemen, that is my decision. The plaintiff may have an exception.

OPINION OF THE SUPREME COURT OF OHIO.

(Decided March 3, 1971.)

No. 70-128.

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS OF CUYAHOGA COUNTY.

HELEN GRETA FOX,
Administratrix of the Estate of Eugene Harry Fox,
Plaintiff-Appellant,

vs.

MORRISON MOTOR FREIGHT, INC.,
Defendant-Appellee.

Negligence—Action for wrongful death—R. C. 2125.01—"Right of action" construed—Ohio resident killed in foreign state—Action brought in Ohio by Ohio administrator—Damages determined by Ohio law, when—Application of Ohio law not constitutionally impaired—No interests in foreign state—Statutory construction.

1. R. C. 2125.01, which provides a right of action for death caused by a wrongful act in another state "for which a right to maintain an action and recover damages is given by a statute of such other state," does not require the application of that state's limitation of the amount of damages recoverable.

2. In an action brought in Ohio under R. C. 2125.01, by the Ohio administrator of the estate of an Ohio resident who was killed in a motor vehicle collision in another state, where there was no citizen or resident of that

state involved in the collision, and there is no issue of liability, Ohio has all the substantial governmental interests and the law of Ohio is determinative of the damages recoverable.

Plaintiff's decedent, Harry E. Fox, an Ohio resident, was killed in a collision in Illinois between the tractor-trailer he was operating and a tractor-trailer operated by defendant's employee. Both drivers were engaged in trips which had begun, and would have ended, in Ohio.

The defendant corporation, which was authorized to, and was doing business in Ohio, maintained trucking terminals in Akron, Mansfield, Warren and Cleveland. Plaintiff, Helen G. Fox, was appointed administratrix of the estate of Harry E. Fox, and brought this action on behalf of her decedent's next of kin, herself and her minor children, praying for damages in the sum of $750,000. Defendant, Morrison Motor Freight, Inc., offered to confess judgment in the amount of $30,000, the maximum amount of damages recoverable under the then existing Illinois Wrongful Death Act (Section 2, Chapter 70, Illinois statutes) and moved that the trial court rule that damages could not exceed that amount. At the close of plaintiff's opening statement the Court of Common Pleas, holding applicable the Illinois statutory limitation on the amount plaintiff could recover, entered judgment against defendant in the amount of $30,000. The judgment was affirmed by the Court of Appeals. A motion to certify the record having been allowed, the cause is now before this court.

Messrs. Stewart & DeChant and *Mr. Lawrence E. Stewart,* for appellant.

Messrs. Arter & Hadden and *Mr. Smith Warder,* for appellee.

DUNCAN, J. The sole issue involved herein is whether the Ohio law or the Illinois law should be applied in determining the amount of damages recoverable. Application of the law of the place where the injuries occurred would limit plaintiff's maximum recovery to the amount entered by the trial court. Ohio law places no limit on the amount of damages recoverable in a wrongful death action.

This court has never determined whether to apply another state's limitation of the amount of recovery in a wrongful death action brought in Ohio in a case where the occurrence causing death took place in the other state. Nevertheless, this court's dedication to the rule of *lex loci delicti* is far too deeply engrained in our cases to be realistically denied. See *Collins v. McClure* (1944), 143 Ohio St. 569; *Freas v. Sullivan* (1936), 130 Ohio St. 487; *Lyons v. Lyons* (1965), 2 Ohio St. 2d 243; *Ellis v. Garwood* (1958), 168 Ohio St. 241.

Of all the criteria generally set forth for use in the determination of a "choice of laws" (see Cheatham & Reese, Choice of the Applicable Law, 52 Columbia L. Rev. 959), rigid adherence to the rule of *lex loci delicti* has consistently satisfied only two—predictability of results, and ease in the determination of which law to apply. But would rote application of *lex loci delicti*, with its blindness to other operable facts, consistently produce a just result in a wrongful death action where the injuries causing the death of an Ohio resident occur in another state? We think not. Therefore, in such a case the automatic application of the rule of *lex loci delicti* must be abandoned.

R. C. 2125.01 provides a right of action for death caused by a wrongful act in another state for which a right to maintain an action and recover damages is given by a statute of such other state. Section 19a, Article I of the

Ohio Constitution, prohibits laws establishing a limitation on damages in a civil action for death caused by the wrongful act of another. Such clearly-established public policy requires compensation to the spouse, children and other next of kin for all sufficiently demonstrated pecuniary injury resulting from the death. R. C. 2125.02.

Illinois, at the time of the accident herein, as revealed by the provisions of its law, apparently did not likewise evaluate the predicament of a decedent's next of kin, but made certain considerations favoring defendants in a wrongful death case, and presumably their insurers.[1]

In a wrongful death action brought in Ohio, a decision regarding damages, based upon solid Ohio public policy, could be seized upon as compelling reason to adjure the law of the place of the wrong.

Although we believe that a decision made on the basis of public policy in this state would be meritorious, a decision made solely on that basis would ignore other relevant aspects of the multi-state wrongful death problem. A public policy solution founded on the policy of the forum state requires only the discovery and application of that state's policy. If application of the rule of *lex loci delicti* is automatic, a decision based on the discovery and application of the public policy of the forum would be semi-automatic, the application of which would appear to ignore situations wherein the public policy of more than one state may well demand consideration. Such a situation would arise in the case at bar if the driver of defendant's truck were an Illinois resident and if the defendant were an Illinois corporation. Resting our decision

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[1] In 1967, Illinois amended its wrongful death statute. Currently there is no limitation on the amount of damages recoverable. Section 2, Chapter 70, Illinois statutes.

on public policy in this case might well be adequate, but would be far too shortsighted to serve as a rule of law.

Although the majority of jurisdictions having cause to review *lex loci delicti* have rejected its continued automatic use,[2] appellee suggests that deviation from the law of the place of the wrong is so laden with trepidation because of innumerable problems with most complex and obscure solutions, that other "choice of law" rules do more violence to fairness than the firm rules they attempt to succeed. It is claimed that the abandonment of *lex loci delicti* by New York courts has generated confusion. *Babcock v. Jackson* (1963), 12 N. Y. 2d 473, 191 N.E.2d 279; *Dym v. Gordon* (1965), 16 N. Y. 2d 120, 209 N.E.2d 792; *Macey v. Rozbicki* (1966), 18 N. Y. 2d 289, 221 N.E.2d 380; *Miller v. Miller* (1968), 22 N. Y. 2d 12, 237 N.E.2d 877; *Tooker v. Lopez* (1969), 24 N. Y. 2d 569, 249 N.E.2d 394, are cases illustrative of the problems that have arisen after the demise of *lex loci delicti*, particularly in cases involving host-guest, multi-state tort actions.

With full appreciation of the extent of the disturbance of the placidness of choice of laws under a mechanical rule

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[2] Since 1965, these cases reflect a review of the doctrine of *lexi loci delicti* by appellate courts, all of which have examined the rule and rejected its continued automatic use. *Armstrong v. Armstrong* (Alaska 1968), 441 P. 2d 699; *Schwartz v. Schwartz* (1968), 103 Ariz. 562, 447 P. 2d 254; *Reich v. Purcell* (1967), 67 Cal. 2d 551, 432 P.2d 727; *Myers v. Gaither* (D. C. App. 1967), 232 A.2d 577; *Wartell v. Formusa* (1966), 34 Ill. 2d 57, 213 N.E.2d 544; *Watts v. Pioneer Corn Co.* (C. A. 7, 1965), 342 F.2d 617; *Fabricius v. Horgen* (1965), 257 Iowa 268, 132 N.W.2d 410; *Wessling v. Paris* (Ky. App. 1967), 417 S.W.2d 259; *Beaulieu v. Beaulieu* (Me. 1970), 265 A.2d 610; *Schneider v. Nichols* (1968), 280 Minn. 139, 158 N.W.2d 254; *Mitchell v. Craft* (Miss. 1968), 211 S.2d 509; *Clark v. Clark* (1966), 107 N. H. 351, 222 A.2d 205; *Pfau v. Trent Aluminum Co.* (1970), 55 N. J. 511, 263 A.2d 129; *Tooker v. Lopez* (1969), 24 N. Y. 2d 569, 249 N.E.2d 394; *Casey v. Manson Constr. & Eng. Co.* (1967), 247 Ore. 274, 428 P.2d 898; *Cipolla v. Shaposka* (Pa. 1970), 267 A.2d 854; *Woodward v. Stewart* (R. I. 1968), 243 A.2d 917; *Conklin v. Horner* (1968), 38 Wis. 2d 468, 157 N.W.2d 579.

of *lex loci delicti*, the facts of the case at bar classically demonstrate the injustice of the automatic application of the law of the place of the injury.

By offering to confess judgment, defendant in effect admitted liability for negligence, thus removing from consideration any conflict concerning the conduct required of motorists by Illinois traffic laws.

As noted by Chief Justice Traynor in *Reich v. Purcell* (1967), 67 Cal. 2d 551, 556, 432 P.2d 727:

> "Limitations of damages * * * have little or nothing to do with conduct. They are concerned not with how people should behave, but how survivors should be compensated. The state of the place of the wrong has little or no interest in such compensation when none of the parties reside there."

See, also, *Fabricius v. Horgen* (1965), 257 Iowa 268, 132 N.W.2d 410; *Tramontana v. S. A. Empresa De Viacao Aerea Rio Grandense* (C. A. D. C. 1965), 350 F.2d 468; *Griffith v. United Air Lines* (1964), 416 Pa. 1, 203 A. 2d 797; *Ingersoll v. Klein* (1969), 106 Ill. App. 2d 330, 245 N.E.2d 288.

We have no doubt that if an issue were involved concerning the driving conduct of the parties within the state where the accident occurred that state would have a substantial interest in the determination of that issue; therefore, in choosing the law to be applied such an interest would have to be considered.

All governmental interest in this case is Ohio's. Both the interest in fair and adequate compensation for the next of kin of an Ohio resident killed by a wrongdoer and the lawful administration of the decedent's estate are solely Ohio governmental interests. We fail to find any Illinois concern involved or disturbed.

In this case, it may be stated that there is no true conflict of laws problem, or a false conflict, since Illinois has no interest in the litigation. See *Reich v. Purcell, supra* (67 Cal. 2d 551); Traynor, Is This Conflict Really Necessary, 37 Tex. L. Rev. 657. However, any theory of choice of law other than *lex loci delicti* calls for the evaluation of the posture of the law of more than one state. Once the process of examining the law of the place of injury, the law of the forum, and the law of any other state having an interest is implemented, whether or not a conflict is found, the decision-making process is the same. Therefore, the true search in each instance is for substantial state governmental interest; only the results of the search differ. In order to determine the most substantial interest, a weighing of any conflicting governmental interests of states concerned is necessary.

A holding for appellee in this case can only be justified for the sole reason of preserving the rule of *lex loci delicti*,[3] a rule which no party even argues is more likely than not to be just in any multi-state wrongful death situation. We do not believe that a retreat from utilization of that rule can be made only upon showing a court's present ability to pre-establish a new and different rule which would be applicable in all conceivable multi-state tort problems.

The proper law applicable for determining the measure of damages in the case at bar is Ohio law.

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[3] Since 1965, the following cases reflect adherence to the rule applying the law of the place of the injury. *McGinty v. Ballentine Produce* (1966), 241 Ark. 533, 408 S.W.2d 891; *Landers v. Landers* (1966), 153 Conn. 303, 216 A.2d 183; *Folk v. York-Shipley* (Del. 1968), 239 A.2d 236; *McDaniel v. Sinn* (1965), 194 Kan. 625, 400 P.2d 1018; *Cook v. Pryor* (1968), 251 Md. 41, 246 A.2d 271; *Abendschein v. Farrell* (1969), 382 Mich. 510, 170 N.W.2d 137; *Cobb v. Clark* (1965), 265 N. C. 194, 143 S.E.2d 103; *Oshiek v. Oshiek* (1964), 244 S. C. 249, 136 S.E.2d 303; *Marmon v. Mustang Aviation* (Tex. 1968), 430 S.W.2d 182.

Appellee also urges that a failure to apply Illinois law fails to follow the plain dictates of R. C. 2125.01, and would be an unconstitutional extra-territorial extension of Ohio jurisdiction.

The pertinent provisions of R. C. 2125.01 read:

> "When death is caused by a wrongful act, neglect, or default in another state, territory, or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state, territory, or foreign country, *such right of action* may be enforced in this state." (Emphasis added.)

That provision was enacted in response to decisions of this court which had held that an Ohio administrator could not maintain, in Ohio, an action for wrongful death under the statutes of another state. See *Woodard v. Michigan Southern & Northern Indiana Rd. Co.* (1859), 10 Ohio St. 121; *Hover v. Pennsylvania Co.* (1874), 25 Ohio St. 667; *Brooks v. Railway Co.* (1895), 53 Ohio St. 655.

A "right of action" is "an adjective or remedial right to invoke the court for redress of the wrong" *(Van Camp v. McCulley* [1913], 83 Ohio St. 1, 6), or, more simply, the "right to sue" *(Baltimore & Ohio Rd. Co. v. Hollenberger* [1907], 76 Ohio St. 177, 184). See, also *Fielder v. Ohio Edison Co.* (1952), 158 Ohio St. 375, 382; Black's Law Dictionary (4 Ed.), 1488. Neither the intent of the General Assembly nor the clear meaning of the words used would lead us to believe that the Ohio statute requires the complete and automatic application of Illinois law to each and every wrongful death action accruing from a tort which occurred in that state.

The simple meaning of the above-quoted provisions of R. C. 2125.01 is that *a right to sue* for an alleged wrongful death occurring in another state *may be enforced* in the courts of Ohio. While the General Assembly did, in effect,

incorporate the statute of limitations of the *situs* state,[4] its failure to specifically require any further application of foreign law supports our conclusion that there is no intended requirement that the entire Illinois statute be utilized. The relationship of Ohio with this litigation is more than significant enough to counter the contention that our result herein affronts the federal Constitution. See *Richards v. United States* (1962), 369 U. S. 1.

The rusty boiler-plate rule of *lex loci delicti* may once have served to solve choice-of-law problems, but its value in our highly motorized transient society in a wrongful death case is so eroded by its low yield of justice that we cannot justify its automatic application.

The judgment of the Court of Appeals is reversed and the cause is remanded to the Court of Common Pleas for further proceedings in accordance with this opinion.

Judgment reversed.

O'NEILL, C. J., HERBERT, CORRIGAN, STERN and LEACH, JJ., concur.

SCHNEIDER, J., concurs in the syllabus and judgment.

LEACH, J., concurring. By this concurring opinion I hope to again remind the bench and bar of this state of the long-established rule of this court that the syllabus of an opinion is the only part of the opinion requiring the approval of the members concurring in the judgment, and of the fact that "where the judge writing the opinion discusses matters or gives expression to his views on questions not contained in the syllabus, it is merely the per-

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[4] R. C. 2125.01 provides in part:

"Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state, territory, or foreign country."

sonal opinion of that judge." *State, ex rel. Donahey, v. Edmondson* (1913), 89 Ohio St. 93, at page 107. See, also, *Charles A. Burton, Inc., v. Durkee* (1954), 162 Ohio St. 433.

I agree that neither reason nor precedent compels us to blindly apply to the facts in this case the law of Illinois, in force at the time of the motor vehicle collision herein, limiting recovery of *damages* to $30,000 in all wrongful death actions. I would further agree that the rule of *lex loci delicti* does not require its *automatic* application in all cases or as to all aspects of a case. I do not, however, relegate this rule to the junk-heap of "rusty boiled plate," nor do I agree that the general application of this rule has resulted in a "low yield of justice."

By our ruling herein, I believe that we are defining an *exception* to the rule—but I trust that we are not completely discarding a rule of law, long basic to most American jurisprudence, and embarking upon a relatively uncharted course with no real and definitive pole-star as a guide.

The impact of such a course on delay and congestion in the courts is referred to by Professor Karlen[5] in his recent English lectures. These lectures are contained in Judicial Administration—The American Experience, where at page 66, he states:

> "* * * The old choice of law rule in such a case was that the substantive law of the place where the tort occurred would govern. The new concept is that the court of the forum will follow the law of the state having the most 'significant contacts' with the litigation. The difficulties posed by such concepts in a nation where each state retains a high degree of sovereignty and where people travel from state to

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[5] Director of the Institute of Judicial Administration Inc., New York, and Professor of Law, New York University.

> state very freely are formidable. They add new elements of instability to laws which are already uncertain, and make confusion worse confounded."

Being in essential agreement with Professor Karlen's statement, I do not want my concurrence herein to be interpreted as approving a complete discarding of *lex loci delicti.*

SCHNEIDER, HERBERT and STERN, JJ., concur in the foregoing concurring opinion.

JUDGMENT OF THE SUPREME COURT OF OHIO.

(March 3, 1971.)

No. 70-128.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS.

HELEN GRETA FOX, Admx.,

Appellant,

vs.

MORRISON MOTOR FREIGHT, INC.,

Appellee.

APPEAL FROM THE COURT OF APPEALS
FOR CUYAHOGA COUNTY.

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is reversed for the reasons stated in the opinion filed herein; and, cause is remanded to the Court of Common Pleas for further proceedings in accordance with such opinion.

It is ordered and adjudged also that appellant recover from appellee its costs expended in this Court; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

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CERTIORARI TO THE SUPREME COURT OF OHIO.

PETITION FOR WRIT OF CERTIORARI BY MORRISON MOTOR FREIGHT, INC.

THOMAS V. KOYKKA,
SMITH WARDER,
ARTER & HADDEN,
1144 Union Commerce Building,
Cleveland, Ohio 44115,
Attorneys for Petitioner.

May 3, 1971.

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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. _____.

MORRISON MOTOR FREIGHT, INC.,

Petitioner,

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,

Respondent.

CERTIORARI TO THE SUPREME COURT OF OHIO.

PETITION FOR WRIT OF CERTIORARI BY MORRISON MOTOR FREIGHT, INC.

Morrison Motor Freight, Inc. petitions the Court to issue its writ of certiorari to the Supreme Court of Ohio to review the judgment entered by that court in cause No. 70-128 on the docket of that court.

OPINIONS BELOW.

The oral opinion of the Court of Common Pleas of Cuyahoga County, Ohio, is not reported, but appears in the Appendix hereto at page 1. The opinion of the Supreme Court of Ohio in *Fox v. Morrison Motor Freight, Inc.*, 25 Ohio St. 2d 193; 267 N.E.2d 405, is set forth in the Appendix at page 8.

JURISDICTION.

Judgment is dated and was entered March 3, 1971 (Appendix page 19). Rehearing was not sought.

Jurisdiction to review is granted by 28 U.S.C. 1257 (3).

QUESTION PRESENTED.

The question presented is:

Whether in an action for wrongful death arising out of a traffic accident in Illinois an Ohio court may constitutionally award damages in excess of the $30,000 ceiling imposed by the Illinois statute.

STATUTES AND CONSTITUTION.

The Illinois statute in question provides, 70 Illinois Revised Statutes §§ 1 and 2:

"(1) Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

(2) Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person and in every such action *the jury may give such damages as they shall deem a fair and just compensation* with reference to the pecuniary injuries resulting from such death, to the wife and next of kin of such deceased person, not exceeding $20,000 where such death occurred prior to July 14, 1955, and not exceeding $25,000 where such death occurred on or after July 14, 1955 and

prior to July 8, 1957, and *not exceeding $30,000* where such death occurs on or after July 8, 1957. (The remainder of 70 Section 2 is not here pertinent).*

The United States Constitution provides, Article IV, Section 1:

> "Full Faith and Credit shall be given in each State *to the public Acts,* Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The implementing statute, 28 U.S.C. 1738, provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, *shall have the same full faith and credit in every court within the United States* and its Territories and Possessions *as they have by law* or usage *in the courts of such State,* Territory or Possession from which they are taken."

---

* Emphasis supplied throughout.

STATEMENT OF THE CASE.

On September 19, 1964, respondent's decedent was killed in a traffic accident in Illinois. Decedent and his family were Ohio residents. Petitioner is not an Ohio corporation. It is an interstate carrier and has terminals in many states. Petitioner's driver was an Ohio citizen. Decedent was likewise a professional driver, operating an over-the-road rig for an interstate carrier. Respondent's decedent was a total stranger to both defendant and defendant's driver. In the face of the full faith and credit clause, the Supreme Court of Ohio dismembered the Illinois statute. It gave full faith and credit to so much of the statute as created by the cause of action but refused full faith and credit to its limitation.

The Supreme Court of Ohio itself raised the constitutional issue. Mr. Justice Duncan, in delivering the Court's opinion observed, 25 Ohio St. 2d at 200:

> "The relationship of Ohio with this litigation is more than significant enough to counter the contention that our result herein affronts the federal Constitution. See *Richards v. United States* (1962), 369 U.S. 1."

Richards v. United States does not touch the question here presented. Mr. Chief Justice Warren there observed, 369 U.S. at 15:

> "Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity. Thus, an Oklahoma state court would be free to apply either its own law, the law of the place where the negligence occurred, or the law of Missouri, the law of the place where the injury occurred, to an action

> brought in its courts and involving this factual situation. Both the Federal District Court sitting in Oklahoma, and the Court of Appeals for the Tenth Circuit, have interpreted the pertinent Oklahoma decisions, which we have held are controlling, to declare that *an action for wrongful death is based on the statute of the place where the injury occurred that caused the death. Therefore, Missouri's statute controls the case at bar.*"

In *Richards* the monetary limitation of the Missouri statute was enforced. The court did *not,* as the Ohio Supreme Court mistakenly thought, leave it open to the court to apply *part only* of the public act of a sister state.

The Constitution does not confide to the caprice of courts the faith and credit to be given to the statutes of a sister state; to the contrary, the Constitution demands that "*Full* Faith and Credit *shall* be given in each State to the *public Acts* of every other State."

If, as this Court has held, Wisconsin cannot constitutionally refuse to enforce the Illinois Wrongful Death Act, *Hughes v. Fetter* (1951), 341 U.S. 609, and Illinois cannot constitutionally refuse to enforce the Utah Wrongful Death Act, *First National Bank v. United Airlines* (1952), 342 U.S. 396, it is an affront to the full faith and credit clause to allow Ohio to reject part of the Illinois statute which it professed to enforce. This is not *full* faith and credit.

As to public acts, Article IV leaves no room for choice. As Mr. Justice Jackson, concurring, put it in *First National Bank v. United Airlines,* 342 U.S. at 400:

> "For the essence of the Full Faith and Credit Clause is that *certain* transactions, wherever in the United States they may be litigated, shall have the same legal consequences as they would have in the place where they occurred."

Had this cause of action been litigated in Illinois and judgment for $30,000 entered, it could not thereafter have been relitigated in Ohio and additional sums awarded. The Constitution requires that the result be the same whether the decision be made by an Illinois Court or, as here, by its Legislature.

Respectfully submitted,

THOMAS V. KOYKKA,
SMITH WARDER,
Attorneys for Petitioner.

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Supreme Court, U.S.
FILED
JUN 3 1971
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In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1675.

MORRISON MOTOR FREIGHT, INC.,
Petitioner,

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO.

BRIEF FOR RESPONDENT IN OPPOSITION.

LAWRENCE E. STEWART,
STEWART AND DECHANT, Co., L.P.A.,
1014 Hippodrome Building,
Cleveland, Ohio 44114,
Attorneys for Respondent.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-8447

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In the Supreme Court of the United States

OCTOBER TERM, 1970.
No. 1675.

MORRISON MOTOR FREIGHT, INC.,
Petitioner,

v.

HELEN GRETA FOX,
Administratrix of the Estate of Harry Eugene Fox,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO.

BRIEF FOR RESPONDENT IN OPPOSITION.

Respondent, Helen Greta Fox, Administratrix, opposes Petitioner's Petition for Writ of Certiorari to the Supreme Court of Ohio.

OPINIONS BELOW.

The opinions below are adequately set forth in the Petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED.

The question presented by Petitioner is:

Whether in an action for wrongful death arising out of a traffic accident in Illinois an Ohio court may constitutionally award damages in excess of the $30,000 ceiling imposed by the Illinois statute.

The question as presented was answered by the Supreme Court of Ohio as follows:

> "In an action brought in Ohio under R.C. 2125.01, by the Ohio administrator of the estate of an Ohio resident who was killed in a motor vehicle collision in another state, where there was no citizen or resident of that state involved in the collision, and there is no issue of liability, Ohio has all the substantial governmental interests and the law of Ohio is determinative of the damages recoverable."

STATUTES AND CONSTITUTION.

The statutes and constitution of the State of Illinois and the United States Constitution are adequately set forth in the Petition, *except* that the unquoted remainder of paragraph 2 of the Illinois Statute (Illinois Revised Statutes §§ 1 and 2) reads as follows (partially repeated for clarity):

> ". . . $25,000.00, where such death occurred on or after July 14, 1955 and prior to July 8, 1957, and where such death occurs on or after July 8, 1957 and prior to the effective date of this amendatory Act of 1967, *and without limitation where such death occurs on or after the effect date of this amendatory Act of 1967.*" (Emphasis ours.)

The Constitution of the State of Ohio and its statutes were not set forth by Petitioner and are herewith provided:

Ohio Constitution, Article I, Section 19(a).

§ 19a Damage for wrongful death.

"The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law. (Adopted September 3, 1912.)"

The Ohio Revised Code Section 2125.01 provides:

"When the death of a person is caused by wrongful act, neglect, or default which would have entitled the party injured to maintain an action and recover damages if death had not ensued, the corporation which or the person who would have been liable if death had not ensued, or the administrator or executor, shall be liable to an action for damages, notwithstanding the death of the person injured and although the death was caused under circumstances which make it murder in the first or second degree, or manslaughter. When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

When death is caused by a wrongful act, neglect, or default in another state, territory, or foreign country, for which a right to maintain an action and recover damages is given by a statute of such other state, territory, or foreign country, such right of action may be enforced in this state. Every such action shall be commenced within the time prescribed for the commencement of such actions by the statute of such other state, territory, or foreign country.

The same remedy shall apply to any such cause of action now existing and to any such action commenced before January 1, 1932, or attempted to be commenced in proper time and now appearing on the files of any court within this state, and no prior law of this state shall prevent the maintenance thereof."

STATEMENT OF THE CASE.

Respondent's decedent, 37 years of age, a husband and father of five children, was killed September 19, 1964, by the admitted negligence of Petitioner while it was operating one of its tractor trailer outfits.

The death occurred near Greenville, Illinois.

Petitioner's tractor trailer outfit originated in the State of Ohio and was on the home bound leg of a round trip.

Petitioner is and was a corporation authorized to do and doing business in the State of Ohio and having trucking terminals in three Ohio cities. Petitioner's rig was being operated by a resident of Ohio.

Respondent's decedent, an Ohio resident, was operating a tractor trailer outfit of Lee Way Motor Freight which company was authorized to do and was doing business in the State of Ohio with trucking terminals in Ohio. Respondent's decedent was on the out-bound leg of a round trip which commenced and was to end in Ohio.

Illinois' only connection was that the collision occurred in that state.

The issue presented the Supreme Court of Ohio was should Illinois law or Ohio law be followed as to damages. Illinois then had a limitation of $30,000.00 damages for wrongful death (since repealed) and Ohio by constitution had no limitation.

ARGUMENT.

I. THE DECISION BELOW IS CORRECT.

The Supreme Court of the State of Ohio determined that this conflict of law question should be resolved by the application of the Ohio rule as to damages as Ohio had the more substantial (and only) interest and contact with the litigation and parties. Illinois' interest in the controversy was non-existent except for being the fortuitous place of the collision in which respondent's decedent was killed.

Judges and Courts, who are the giants and leaders in making important and substantial contributions to the living law of this country, as well as the scholars, professors and legal writers in the area of conflicts of law have decided the same question presented the Ohio Supreme Court and by an overwhelming majority have concluded that the law to be applied is that of the State which has the most substantial governmental interest and the most significant relationship to the occurrence and the parties, just as was done by the Ohio Supreme Court.

Petitioner seeks the application of lex loci delicti to this fact situation without recognizing these salient facts (which were recognized by the Ohio Supreme Court), i.e. (1) Illinois had subsequently repealed its damage limitation, (2) the Petitioner admitted liability and thus Illinois' traffic laws were not in issue, (3) the only contact Illinois had in the case was in being the fortuitous place of the occurrence, (4) the Illinois Supreme Court itself has refused to apply lex loci delicti to a wrongful death action where Illinois citizens were killed in Iowa and the action was brought in Illinois, *Ingersoll vs. Klein* (1969), 106 Ill. App. 2d 330, 245 N.E.2d 288:

> "Illinois as both the forum state and the domicile of potential beneficiaries has a more significant interest in the recovery for wrongful death than does Iowa, whose only interest arises from the fortuitous occurrence of the accident in that state."

The Ohio Supreme Court decided this case on the facts which were peculiar to this one case in which Illinois was and is unconcerned, as stated by Mr. Justice Duncan in delivering the Court's opinion, 25 Ohio St. 2d 193 at page 198, to-wit:

> "All governmental interest in this case is Ohio's. Both the interest in fair and adequate compensation for the next of kin of an Ohio resident killed by a wrongdoer and the lawful administration of the decedent's estate are solely Ohio governmental interests. We fail to find any Illinois concern involved or disturbed.
>
> In this case, it may be stated that there is no true conflict of laws problem, or a false conflict, since Illinois has no interest in the litigation. . . .
>
> The proper law applicable for determining the measure of damages in the case at bar is Ohio law."

II. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW.

A unanimous United States Supreme Court previously decided this issue on February 26, 1962 in the case of *Richards vs. United States,* 369 U.S. 1 (1961), and spoke through the opinion of Mr. Chief Justice Warren, to-wit (page 15):

> "Our view of a State's power to adopt an appropriate conflict of laws doctrine in a situation touching more than one place has been dictated by our discussion in Part III of this opinion. Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, *could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity.* Thus, an Oklahoma state court would be free to apply either its own law, the law of the place where the negligence occurred, or the law of Missouri, the law of the place where the injury occurred, to an action brought in its courts and involving this factual situation. Both the Federal District Court sitting in Oklahoma, and the Court of Appeals for the Tenth Circuit, *have interpreted the pertinent Oklahoma decisions,* which we have held are controlling to declare that an action for wrongful death is based on the statute of the place where the injury occurred that caused the death. Therefore, Missouri's statute controls the case at bar." (Emphasis ours.)

The later opinion clearly holds that a State is free to "*constitutionally*" apply either its own law, the law of the place of the negligence, or the other State's law. Thus, the issue Petitioner now presents has been passed upon and decided already by the United States Supreme Court. There is no reason for a change.

Petitioner's attempt to muddy the foregoing opinion is artful, but not credible, as Petitioner seeks to imply that when the court applied lex loci delicti, that such doctrine must always be applied, while the clear and stated fact is that the lower courts (Federal District and Court of Appeals Tenth Circuit) had interpreted the Oklahoma law to follow the doctrine lex loci delicti which in turn the federal court was required to follow, *Erie R. Co. vs. Tompkins,* 304 U.S. 64, but the State itself was still free to select the law to be applied.

Petitioner has cited *Hughes vs. Fetter* (1951), 341 U.S. 609, apparently without noting that the language of the opinion supports the decision of the Ohio Supreme Court in this instant case, to-wit:

> "We have recognized, however, that full faith and credit does *not* automatically compel a *forum* state to subordinate its *own statutory policy* to a conflicting public act of another state; rather it is for this Court to choose in each case between the competing public policies involved . . ." (Emphasis ours.)

The case of *First National Bank vs. United Airlines* (1952), 342 U.S. 396 cited by Petitioner is actually an identical case, with different states, but with the same result.

To accept this case on the merits this Supreme Court of the United States will have to say that it is no longer the law that a forum state has the right to choose in each case as between its public policy and that of a sister state.

Ohio accorded full faith and credit to the right of action created by the Illinois Statute for wrongful death; no more is required. Ohio found the Illinois monetary limitation of $30,000.00 repugnant to the clear mandate of the Ohio Constitution and Ohio Revised Code § 2125.01,

and additionally found the limitation repugnant to Ohio's public policy, and further repugnant to the facts in this case, and also repugnant to requirement that the court search and find a just result rather than adopt a "boiler plate rule" which offers only a "low yield of justice" and thus yields injustice. The case of *Richards vs. U. S., supra,* recognizes Ohio's right to make such findings and thus no federal constitutional question is presented by this case.

Precedent has a significance. *Not a single one* of more than a dozen States has found the issue herein presented to be a question of federal law; *not a single* federal court sitting in any of the States has found the decision it made (in applying the law of the forum in which it sat) applying the law of the forum and not the law of the State where the tort took place (lex loci delicti) to be a violation of the full faith and credit clause of the United States Constitution. (See footnote 2, page 12 Petitioner's Appendix.)

CONCLUSION.

The Petition does not present a meritorious claim and should be denied.

Respectfully submitted,

LAWRENCE E. STEWART,
STEWART AND DECHANT, CO., L.P.A.,
Attorneys for Respondent.

SUPREME COURT, U. S.

Supreme Court, U.S.
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REPLY BRIEF FOR PETITIONER IN SUPPORT OF CERTIORARI.

THOMAS V. KOYKKA,
SMITH WARDER,
ARTER & HADDEN,
1144 Union Commerce Building,
Cleveland, Ohio 44115,
Attorneys for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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REPLY BRIEF FOR PETITIONER IN SUPPORT OF CERTIORARI.

Respondent, opposing review, fails to answer whether a state can constitutionally give full faith to part only of the statute of a sister state and refuse full faith to another part. Rather, Respondent argues "governmental interest" (just as did the Supreme Court of Ohio).

This is precisely the vice that Article IV, Section 1 of the Constitution was designed to prevent. If, under the guise of "governmental interest" the courts may follow or ignore the public acts of sister states at their whim, then Article IV, Section 1 has been deleted from the Constitution by judicial fiat.

When it is remembered that this is a piece of private litigation in which the sovereign should have no interest, the argument will not wash. Article IV, Section 1 was designed to protect the interests of litigants, not governments.

Respectfully submitted,

THOMAS V. KOYKKA,
SMITH WARDER,
Attorneys for Petitioner,